

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF WORKERS' COMPENSATION

NOTICE OF PROPOSED RULEMAKING

Subject Matter of Regulations: Health Care Organizations

Title 8, California Code of Regulations, Sections 9771, 9778, 9779, 9779.5, and 9779.9.

NOTICE IS HEREBY GIVEN that the Acting Administrative Director of the Division of Workers' Compensation, pursuant to the authority vested in her by Labor Code sections 133, 4600.3, 4600.5, 4600.7 and 5307.3, proposes to amend regulations within Article 4, Subchapter 1 of Chapter 4.5 of Title 8, California Code of Regulations, commencing with section 9771, relating to Health Care Organizations.

PROPOSED REGULATORY ACTION

The Department of Industrial Relations, Division of Workers' Compensation (hereinafter "Division"), proposes to amend regulations within Article 4, Subchapter 1 of Chapter 4.5 of Title 8, California Code of Regulations, commencing with section 9771, relating to Health Care Organizations:

Section 9771	Application for Certification
Section 9778	Evaluation
Section 9779	Certification
Section 9779.5	Reimbursement of Costs to the Administrative Director; Obligation to Pay Share of Administrative Expense
Section 9779.9	Late Payment

PUBLIC HEARING

A public hearing has been scheduled to permit all interested persons the opportunity to present statements or arguments, oral or in writing, with respect to the subjects noted above, on the following dates:

Date: July 27, 2009
Time: 10:00 a.m. to 5:00 p.m. or until conclusion of business
Place: Elihu Harris State Office Building – Auditorium
1515 Clay Street
Oakland, California 94612

The State of California Building and its Auditorium are accessible to persons with mobility impairments. Alternate formats, assistive listening systems, sign language interpreters, or other types of reasonable accommodation to facilitate effective communication for persons with disabilities, are available upon request.

If you will require accommodation to attend the hearing, please contact the Statewide Disability Accommodation Coordinator at 1-866-681-1459 (toll free), or through the

California Relay Service by dialing 711 or 1-800-735-2929 (TTY/English) or 1-800-855-3000 (TTY/Spanish) as soon as possible to request assistance.

In order to ensure unimpeded access for disabled individuals wishing to present comments and facilitate the accurate transcription of public comments, camera usage will be allowed in only one area of the hearing room. To provide everyone a chance to speak, public testimony will be limited to 10 minutes per speaker and should be specific to the proposed regulations. Testimony which would exceed 10 minutes may be submitted in writing.

Please note that public comment will begin promptly at 10:00 a.m. and will conclude when the last speaker has finished his or her presentation. If public comment concludes before the noon recess, no afternoon session will be held.

The Administrative Director requests, but does not require that, any persons who make oral comments at the hearings also provide a written copy of their comments. Equal weight will be accorded to oral comments and written materials.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Division. The written comment period closes at **5:00 p.m., on July 27, 2009.** The Division will consider only comments received by the Division by that time. Equal weight will be accorded to oral comments presented at the hearing and written materials.

Submit written comments concerning the proposed regulations prior to the close of the public comment period to:

Maureen Gray, Regulations Coordinator
Division of Workers' Compensation
Post Office Box 420603
San Francisco, CA 94142

Written comments may be submitted by facsimile transmission (FAX), addressed to the above-named contact person at (510) 286-0687. Written comments may also be sent electronically (via e-mail) using the following e-mail address: dwcrules@dir.ca.gov

Unless submitted prior to or at the public hearing, Ms. Gray must receive all written comments no later than **5:00 p.m. on July 27, 2009.**

AUTHORITY AND REFERENCE

The Administrative Director is undertaking this regulatory action pursuant to the authority vested in the Administrative Director by Labor Code Sections 133, 4600.3, 4600.5, 4600.7, 4603.5, and 5307.3.

Reference is to Labor Code Sections 4600, 4600.3, 4600.5, 4600.6 and 4600.7.

INFORMATIVE DIGEST AND POLICY STATEMENT OVERVIEW

Labor Code section 4600.3 established Health Care Organizations (“HCOs”) which are certified medical organizations that enable employers to manage the health care of injured employees in accordance with Labor Code section 4600.3 *et seq.* Labor Code sections 4600.5 and 4600.6 require the administrative director to develop a certification procedure for HCOs. Labor Code sections 4600.5 and 4600.7 require the administrative director to establish reasonable fees to cover the costs of HCO certification and administration. The administrative director has established regulations implementing these provisions of the Labor Code.

These proposed regulations amend and implement these sections of the Labor Code as follows:

- **Proposed Amendments to Section 9771 - Application for Certification.**

Section 9771 specifies the fees and information required in an application to the Administrative Director for certification as an HCO.

The proposed amendment to subdivision (f) reduces the certification fee from \$20,000 to \$2,500. The proposed amendment to subdivision (g)(1) reduces the certification fee for Health Care Service Plans licensed pursuant to the Knox-Keene Health Care Service Plan Act from \$10,000 to \$1,000.

- **Proposed Amendments to Section 9778 - Evaluation**

Section 9778 lists the information required by the Workers’ Compensation Information System (WCIS) as well as additional data to be collected for HCO evaluation purposes.

Subdivision (a)(1) has been revised to avoid duplication of information that is now being collected electronically by the WCIS.

Subdivision (a)(2) has been added and replaces subdivision (c)(2) to clarify the annual deadline for the submission of the remaining required information to the Administrative Director.

Subdivisions (b)(1) through (b)(10) have been deleted and replaced by language in subdivision (b) to avoid duplication of information that is now being collected electronically by the WCIS.

Subdivision (c)(1) and (c)(2) have been deleted and replaced by language in subdivision (b) to avoid duplication of information that is now being collected electronically by the WCIS.

- **Proposed Amendments to Section 9779 – Certification**

Section 9779 specifies the length of HCO certification to be three years and defines what the certification includes. The section also requires recertification at the expiration of the certification period and states the fee for recertification.

The proposed amendment to subdivision (d) reduces the recertification fee from \$10,000 to \$1,000.

- **Proposed Amendments to Section 9779.5 - Reimbursement of Costs to the Administrative Director; Obligation to Pay Share of Administrative Expense**

Section 9779.5 specifies additional fees to be submitted by certified HCOs to the Administrative Director to contribute to paying the costs of HCO administration but not to exceed the costs of administration. The section mandates an Annual Assessment fee per HCO enrollee, an annual general fund loan repayment surcharge to be paid for up to eight years, and imposes non-routine audit fees.

The proposed amendment to subdivision (a)(1) reduces the annual assessment fee from \$1.00 per HCO enrollee to a three-tiered fee assessment system: \$250.00 for 0 to 1000 HCO enrollees, \$350 for 1001 to 5000 HCO enrollees, and \$500 for 5001 or more HCO enrollees.

The proposed amendment to subdivision (a)(2) eliminates the general loan repayment surcharge.

- **Proposed Amendments to Section 9779.9 - Late Payment**

Section 9779.9 imposes a late payment fee for failure to pay fees and assessments more than sixty days after the payment deadline.

The proposed amendment eliminates the late payment fee.

DISCLOSURES REGARDING THE PROPOSED REGULATORY ACTION

The Administrative Director has made the following initial determinations:

- Significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states: None. The economic impact of the regulations is expected to benefit California businesses as the regulations significantly reduce the existing fees.
- Adoption of these regulations
 - (1) **may** affect the creation of jobs within the State of California if there is an increase in HCOs and their need for employees, but the regulations will not eliminate jobs within the State of California,
 - (2) **may** create new businesses as more HCOs may be created to meet an increase in demand for HCO services due to the regulatory changes, but

the regulations will not eliminate existing businesses within the State of California, and

- (3) **may** affect the expansion of businesses currently doing business in California as the regulations ease the economic costs of running and having an HCO, which will likely increase business for HCOs.
- Effect on Housing Costs: None.
- Cost impacts on representative private persons or business: The proposed regulations will not have a significant adverse economic impact on representative private persons or directly affected businesses. The economic impact of the regulations is expected to benefit California businesses as the regulations significantly reduce the existing fees.

EFFECT ON SMALL BUSINESS

The Administrative Director has determined that the proposed regulations will not affect small businesses. The businesses that are subject to the proposed regulations are insurers, health care service plans, and third party administrators, none of which qualify as “small businesses.”

FISCAL IMPACTS

- Costs or savings to state agencies or costs/savings in federal funding to the State: There may be administrative costs to the Division resulting from the regulations due to an increase in HCOs. These costs will be addressed through the normal budget process.
- Local Mandate: None. The proposed regulations will not impose any new mandated programs or increased service levels on any local agency or school district.
- Cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with section 17500) of Division 4 of the Government Code: None. (See “Local Mandate” section above.)
- Other nondiscretionary costs/savings imposed upon local agencies: None. (See “Local Mandate” section above.)

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5(a)(13), the Administrative Director must determine that no reasonable alternative considered or that has otherwise been identified and brought to the Administrative Director’s attention will be more effective in carrying out the purpose for which the actions are proposed or will be as effective and less burdensome to affected private persons than the proposed actions.

The Administrative Director invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

PUBLIC DISCUSSIONS OF PROPOSED REGULATIONS

Pursuant to Government Code section 11346.45, the text of the draft proposed regulations was made available for pre-regulatory public comment by the general public through a posting on the Division's Internet message board (the DWC Forums).

AVAILABILITY OF INITIAL STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS, RULEMAKING FILE AND DOCUMENTS SUPPORTING THE RULEMAKING FILE / INTERNET ACCESS

An Initial Statement of Reasons and the text of the proposed regulations in plain English have been prepared and are available from the contact person named in this notice. The entire rulemaking file will be made available for inspection and copying at the address indicated below.

As of the date of this notice, the rulemaking file consists of the Notice, the Initial Statement of Reasons, the proposed text of the regulations, pre-rulemaking comments, and the Economic and Fiscal Impact Statement (Form 399). As public comments are received during the rulemaking process, they will be added to the rulemaking file.

In addition, the Notice, Initial Statement of Reasons, and proposed text of regulations may be accessed and downloaded from the Division's website at www.dir.ca.gov. To access them, click on the "Proposed Regulations - Rulemaking" link and scroll down the list of rulemaking proceedings to find the current "Health Care Organization Regulations" rulemaking.

Any interested person may inspect a copy or direct questions about the proposed regulations and any supplemental information contained in the rulemaking file. The rulemaking file will be available for inspection at the headquarters of the Division of Workers' Compensation, 1515 Clay Street, Oakland, California, between 9:00 a.m. and 4:30 p.m., Monday through Friday. Copies of the proposed regulations, initial statement of reasons and any information contained in the rulemaking file may be requested in writing to the contact person.

CONTACT PERSON

Nonsubstantive inquiries concerning this action, such as requests to be added to the mailing list for rulemaking notices, requests for copies of the text of the proposed regulations, the Initial Statement of Reasons, and any supplemental information contained in the rulemaking file may be requested in writing at the same address. The contact person is:

Maureen Gray, Regulations Coordinator
Division of Workers' Compensation
Post Office Box 420603
San Francisco, CA 94142

Inquiries may be submitted by e-mail to: mgray@dir.ca.gov

The telephone number of the contact person is (510) 286-7100.

BACKUP CONTACT PERSON / CONTACT PERSON FOR SUBSTANTIVE QUESTIONS

In the event the contact person is unavailable, or to obtain responses to questions regarding the substance of the proposed regulations, inquiries should be directed to the following backup contact person:

Yu-Yee Wu
Division of Workers' Compensation
Post Office Box 420603
San Francisco, CA 94142

The telephone number of the backup contact person is (510) 286-7100.

AVAILABILITY OF CHANGES FOLLOWING PUBLIC HEARING

Upon closure of time for receipt of public comments, the Administrative Director may adopt the proposed rulemaking substantially as described above or may modify it if such modifications are sufficiently related to the original text.

With the exception of technical, grammatical or other non-substantive changes, if the Administrative Director makes any changes to the proposed regulations as a result of the public hearing and public comment received, the full text of such modifications to the proposed rulemaking, with changes clearly indicated, will be made available for public comment 15 days prior to their adoption. Notice of the modified text will be mailed to those persons who submit written or oral comments related to the proposed rulemaking or who request notification of any changes to the proposed rulemaking.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, the Final Statement of Reasons will be available and copies may be requested from the contact person named in this notice or may be accessed on the website: www.dir.ca.gov .

AUTOMATIC MAILING

A copy of this Notice, the Initial Statement of Reasons, and the text of the regulations, will automatically be sent to those interested persons on the Administrative Director's mailing list.

If adopted, the proposed amendments to the health care organization regulations will appear in Title 8, California Code of Regulations, commencing with section 9771.

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